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B-148804, Jun. 7, 1962

Number: B-148804

Date: 1962-06-07

B-148804, JUN. 7, 1962

TO AUTHORIZED FEDERAL HOUSING ADMINISTRATION, HOUSING AND HOME FINANCE AGENCY:

YOUR LETTER OF APRIL 27, 1962, TRANSMITS VOUCHER AND SCHEDULE OF PAYMENTS, AND RELATED CLAIM FILE, IN FAVOR OF THE WESTERN SAVINGS BANK OF BUFFALO, 438 MAIN STREET, BUFFALO, NEW YORK, IN THE AMOUNT OF $3793.22. THE VOUCHER COVERS AN AMOUNT CLAIMED AS REIMBURSEMENT OF A LOSS INCURRED BY REASON OF DEFAULT IN PAYMENT OF A NOTE SIGNED BY WORTH D. IRISH, JR. IN CONNECTION WITH A LOAN MADE TO HIM BY THE AFOREMENTIONED BANK AND REPORTED FOR INSURANCE UNDER ITS CONTRACT AUTHORIZED BY TITLE I OF THE NATIONAL HOUSING ACT. YOU REQUEST A DECISION AS TO WHETHER YOU MAY CERTIFY THE VOUCHER FOR PAYMENT.

IT IS REPORTED THAT THE INSURED LENDER, PURSUANT TO ONE CREDIT APPLICATION SHOWING THAT ELIGIBLE IMPROVEMENTS WOULD BE MADE TO TWO SEPARATE PROPERTIES ADVANCED THE SUM OF $4000 AND TOOK FROM THE BORROWER ONE NOTE IN THE AMOUNT OF $4910.68 PAYABLE IN 60 INSTALLMENTS. THE QUESTION ARISING IN THIS CASE CONCERNS THE NATIONAL HOUSING ACT PROVISIONS RELATIVE TO THE MAXIMUM AMOUNT OF A LOAN, $3500, FOR WHICH INSURANCE WILL BE GRANTED THEREUNDER.

IT IS POINTED OUT THAT HAD THE LENDER TAKEN TWO NOTES AND REPORTED THE MAKING OF TWO LOANS NO QUESTION WOULD HAVE ARISEN, THE ONLY RESTRICTION APPEARING IN THE REGULATIONS OF THE FEDERAL HOUSING ADMINISTRATION 24 CFR 201.5 (E) WHICH REQUIRE THE COMMISSIONER'S PRIOR APPROVAL FOR ANY LOAN WHICH INCREASES TO MORE THAN $5000 THE AMOUNT OUTSTANDING TO ANY ONE BORROWER. ALSO HANDLING BY THE METHOD USED RESULTS IN LESS LIABILITY TO THE FEDERAL HOUSING ADMINISTRATION BECAUSE OF THE REGULATIONS WHICH WOULD HAVE PERMITTED THE ASSESSMENT OF A HIGHER FINANCING CHARGE FOR TWO NOTES. FURTHER IT IS URGED THAT THE QUESTION OF TECHNICAL VIOLATION COULD HAVE BEEN AVOIDED IF THE LENDER HAD TAKEN TWO NOTES AND ON THE SAME DAY CONSOLIDATED AND REFINANCED THEM INTO ONE AS AUTHORIZED BY THE REGULATIONS.

SECTION 2, TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703, PROVIDES THAT THE FEDERAL HOUSING COMMISSIONER IS EMPOWERED TO INSURE BANKS AND OTHER COMPANIES OR ASSOCIATIONS QUALIFIED AS LENDING INSTITUTIONS AGAINST LOSSES WHICH MAY BE SUSTAINED AS THE RESULT OF LOANS AND ADVANCES OF CREDIT MADE BY THEM FOR FINANCING IMPROVEMENTS OF EXISTING STRUCTURES UPON URBAN, SUBURBAN, OR RURAL REAL PROPERTY. CERTAIN CONDITIONS AND RESTRICTIONS ARE SET FORTH IN THIS SECTION. THERE IS FOR CONSIDERATION HERE THE FOLLOWING PROVISION CONTAINED IN 12 U.S.C. 1703 (B) 4.

"NO INSURANCE SHALL BE GRANTED UNDER THIS SECTION TO ANY SUCH FINANCIAL INSTITUTION WITH RESPECT TO ANY OBLIGATION REPRESENTING ANY SUCH LOAN, ADVANCE

OF CREDIT, OR PURCHASE BY IT (I) IF THE AMOUNT OF SUCH LOAN, ADVANCE OF CREDIT, OR PURCHASE EXCEEDS $3,500; * * *.'

PRIOR TO THE HOUSING ACT OF 1956, AMENDING THE NATIONAL HOUSING ACT, THE LANGUAGE OF THE ABOVE-QUOTED PROVISION CONTAINED DIFFERENT LOAN LIMITATIONS FOR IMPROVEMENT OF EXISTING STRUCTURES AND CONSTRUCTION OF NEW STRUCTURES. THIS LANGUAGE AS CONTAINED IN THE EARLIER LAW WAS INTERPRETED BY A COURT AS ESTABLISHING THE TOTAL AMOUNT WHICH MAY BE LOANED FOR IMPROVEMENTS TO AN EXISTING STRUCTURE. FEDERAL HOUSING ADMINISTRATION V. MORRIS PLAN COMPANY OF CALIFORNIA, 211 F. 2D 756, 759. SINCE THE LEGISLATIVE INTENT OF THE 1956 HOUSING ACT WAS ONLY TO REMOVE THE DIFFERENT LIMITATIONS WITH RESPECT TO THE IMPROVEMENT OF EXISTING STRUCTURES AND THE CONSTRUCTION OF NEW STRUCTURES, NO CHANGE WAS INTENDED, OR EFFECTED, INSOFAR AS THE APPLICATION OF THE PROHIBITORY PROVISIONS AGAINST LOANS IN EXCESS OF $3500 FOR EACH STRUCTURE AFFECTED.

CONSIDERING THAT TITLE I OF THE NATIONAL HOUSING ACT PROVIDES FOR INSURANCE OF INSTITUTIONS AGAINST LOSSES SUSTAINED ON LOANS FOR THE IMPROVEMENT OF EXISTING STRUCTURES, THE AMOUNT LIMITATION EXPRESSED IN THE PROHIBITORY LANGUAGE QUOTED IN REFERENCE TO SUCH LOANS MUST, OF NECESSITY, REFER ONLY TO A SPECIFIC STRUCTURE TO BE IMPROVED WITH THE LOAN. TO HOLD OTHERWISE WOULD LIMIT EACH BORROWER TO A TOTAL AMOUNT OF $3500 IN LOANS REGARDLESS OF THE NUMBER OF STRUCTURES OR PROPERTIES OWNED BY HIM. THIS ALSO WOULD BE CONTRARY TO REGULATIONS ISSUED BY THE FEDERAL HOUSING COMMISSIONER WHEREIN OUTSTANDING AMOUNTS IN EXCESS OF $5000 FOR INDIVIDUAL BORROWERS IS RECOGNIZED AND SANCTIONED UPON PRIOR APPROVAL OF THE COMMISSIONER; 24 CFR 201.5 (E).

ACCORDINGLY THE PROHIBITORY PROVISIONS QUOTED WILL BE RECOGNIZED AS PREVENTING THE AMOUNT OF LOANS MADE WITHIN THE PURVIEW OF THIS ACT FROM EXCEEDING $3500 FOR EACH STRUCTURE IMPROVED. THUS THE PROHIBITION WHEN APPLIED TO A LOAN FOR THE IMPROVEMENT OF TWO SEPARATE STRUCTURES ON TWO SEPARATE PROPERTIES WOULD APPLY ONLY WHERE THE AMOUNT LOANED FOR ONE OF THE STRUCTURES EXCEEDS THE AMOUNT OF $3500.

IN THE CASE BEFORE US THE RECORD SHOWS THAT ON THE BASIS OF ONE CREDIT APPLICATION, INDICATING CLEARLY THAT TWO SEPARATE PROPERTIES WERE TO BE IMPROVED, ONE NOTE WAS EXECUTED IN THE NET AMOUNT OF $4000 BY THE BUFFALO BANK. THE RECORD FURTHER SHOWS THAT INVESTIGATION BY THE BANK REVEALED THAT OF THIS AMOUNT $3000 WAS USED FOR THE IMPROVEMENT OF ONE PROPERTY AND $1000 WAS USED TO IMPROVE THE SECOND PROPERTY. CONSIDERING THE PROVISIONS OF LAW QUOTED AND THE INTERPRETATION AND RATIONALE GIVEN THESE PROVISIONS ABOVE, THE LOAN IN QUESTION BEING LESS THAN $3500 FOR EACH PROPERTY NEED NOT BE REGARDED AS IN VIOLATION OF THE QUOTED PROHIBITION.

WE RECOGNIZE THAT THE MANNER OF EXECUTING THE LOAN HERE INVOLVED IS NOT COMPLETELY IN CONFORMANCE WITH THE REGULATIONS ISSUED UNDER TITLE I LOAN PROVISIONS OF THE NATIONAL HOUSING ACT. THESE REGULATIONS REQUIRE IN THE CASE OF IMPROVEMENTS OF MORE THAN ONE STRUCTURE THE EXECUTION OF SEPARATE NOTES, SEPARATE CREDIT APPLICATIONS AND SEPARATE REPORTING OF THE LOANS TO THE FEDERAL HOUSING ADMINISTRATION. HOWEVER SINCE THE SAME REGULATIONS PERMIT THE CONSOLIDATION AND REFINANCING OF MORE THAN ONE NOTE INTO ONE, THE REQUIREMENT FOR THE EXECUTION OF SEPARATE LOANS, SEPARATE NOTES, ETC. FOR EACH STRUCTURE IMPROVED AT THE TIME THE LOANS ARE MADE APPEARS TO BE ONE FOR THE CONVENIENCE OF THE FEDERAL HOUSING ADMINISTRATION IN THE ADMINISTRATION OF THE LAW AND IS NOT ONE REQUIRED UNDER THE NATIONAL HOUSING ACT AS AMENDED.

ACCORDINGLY, SHOULD THE COMMISSIONER, UNDER AUTHORITY IN 12 U.S.C. 1703 (E), WAIVE COMPLIANCE WITH THE APPLICABLE REGULATIONS WHICH WERE NOT ADHERED TO, THE VOUCHER ENCLOSED WITH YOUR LETTER OF APRIL 27, 1962, MAY BE CERTIFIED FOR PAYMENT, IF OTHERWISE CORRECT. THE VOUCHERS AND RELATED CLAIM FILE ARE RETURNED HEREWITH.